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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION**

20 Daniel Draney, and Lorenzo Ibarra,
21 individually and on behalf of all others
22 similarly situated,

23 Plaintiffs,

24 vs.

25 Westco Chemicals, Inc.; Ezekiel "Alan"
26 Zwillinger; and Steven Zwillinger,

27 Defendants.

28 Case No. 2:19-cv-01405-ODW-AGR^x

29 **PLAINTIFFS' NOTICE OF
30 MOTION AND MOTION FOR
31 CLASS CERTIFICATION**

32 Date: December 19, 2022

33 Time: 1:30 p.m.

34 Ctrm: 5D, 5th Floor

35 Hon. Otis D. Wright II

1 **NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3

4 PLEASE TAKE NOTICE that on December 19, 2022 at 1:30 p.m. in the 1st

5 Street Courthouse, Courtroom 5D on the 5th Floor of the above-entitled Court, located

6 at 350 W. 1st Street, Los Angeles, California 90012, Plaintiffs will move, and hereby

7 do move, pursuant to Rule 23 of the Federal Rules of Civil Procedure and other

8 applicable law, to certify this case to proceed as a class action (“Class Certification

9 Motion”). In conjunction therewith, Plaintiffs seek appointment of Michael C. McKay

10 and Shoham J. Solouki as Class Counsel.

11

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13 Plaintiffs Daniel Draney and Lorenzo Ibarra (“Plaintiffs”) are participants in the

14 Westco Chemicals, Inc. Profit Sharing 401(k) Plan (the “Plan”), a 401(k) plan under

15 the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.*

16 (“ERISA”). Defendants are fiduciaries of the Plan, who owe to the Plan and all

17 participants a broad range of fiduciary duties. In this action, Plaintiffs allege that

18 Defendants breached those duties by:

19

20

21 ■ Failing to provide Plaintiffs and participants with statutorily required

22 disclosures about the Plan’s terms, holdings, investments, fees, and

23 performance;

24

25 ■ Failing to hire and monitor qualified professionals to manage and assist

26 in the management of the Plan;

27

- Failing to provide Plan participants with adequate and prudent investment options; and
- Limiting the Plan's investment options in a manner designed to benefit Defendants and to the detriment of Plan participants.

Plaintiffs bring this action under 29 U.S.C. §1132(a)(2) and (3) on behalf of the Plan against Defendants Westco Chemicals, Inc.; Ezekiel “Alan” Zwillinger and Steven Zwillinger for breach of fiduciary duties. As explained in the attached Memorandum of Points and Authorities, Plaintiffs satisfy the requirements of Federal Rule of Civil Procedure 23(a) and Rule 23(b)(1)(A) and (B), or, alternatively, Rule 23(b)(3). Plaintiffs seek certification of the following class:

All participants and beneficiaries of the Westco Chemicals, Inc. Profit Sharing 401(k) (“Plan”) whose Plan account had a balance at any time on or after February 25, 2013 through the present. Excluded from the Class are Defendants and any Westco Chemicals Inc. employees having or exercising fiduciary responsibility for the investment of the Plan’s assets or administration of the Plan’s terms.

This Class Certification Motion is made following the conference of counsel pursuant to L.R. 7- 3.

This Class Certification Motion is based on this Notice of Motion and Motion, attached Memorandum of Points and Authorities, supporting Declaration of Michael C. McKay, supporting Declaration of Daniel Draney, and upon such further evidence, pleadings, and argument of counsel as may be presented in connection with the Class Certification Motion.

1 Plaintiffs also expressly incorporate the arguments and evidence submitted in
2 this action in the following filings:

3

- 4 ■ Motion to Certify Class and Preliminarily Approve Settlement.
5 (Dkt. Nos. 60 to 60-4.)
- 6 ■ Amended Notice Motion to Certify Class and Preliminarily Approve
7 Settlement. (Dkt. Nos. 66 to 66-3.)
- 8 ■ Expert Witness Declarations. (Dkt. Nos. 68 to 68-6.)
- 9 ■ Reply in Support of Motion to Certify Class and Preliminarily Approve
10 Settlement. (Dkt. Nos. 71-71-2.)

13 DATED: November 9, 2022

14 Respectfully submitted,

15 /s/ Michael C. McKay
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25 *Attorneys for Plaintiffs and the proposed
26 Class*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2022, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registered users in this case.

/s/ *Michael C. McKay*